IN THE

Supreme Court of the United States

October Term, A.D. 1953.

No. 306

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, *Petitioner*,

vs.

ARCHIE C. STONE, WILLIAM JUMPER and PUTTA-WATOMIE COUNTY, IOWA, *Respondents*.

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, *Petitioner*,

vs.

ARCHIE C. STONE, *Respondent*.

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, *Petitioner*,

vs.

ARCHIE C. STONE and WILLIAM JUMPER, *Respondents*.

PETITIONER'S REPLY TO RESPONDENTS' BRIEF ON PETITION FOR CERTIORARI

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October Term. A.D., 1953.

No. 209.

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY, *Petitioner*,

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FOREWORD.

A reading of respondents' brief, we believe, demonstrates beyond question that the judgment of the Court of Appeals can be sustained only if, as respondents contend, petitioner might have initiated its condemnation proceeding in the first instance in the United States District Court. The question posed by respondents' brief, boldly stated, is simply this: In a diversity case may a United States District Court entertain jurisdiction in a purely administrative proceeding prescribed by state law, because the law of the state also pre-

scribes a judicial review of the administrative decision when completed?

To ask the question is, of course, to answer it. We submit that upon no other legally tenable theory can the judgments of the courts below be upheld.

SUMMARY OF ARGUMENT.

I.

Petitioner manifestly could not institute the purely administrative proceeding prescribed by Iowa condemnation statutes in the United States District Court. The jurisdiction of the District Court is limited to "civil actions".

Tit. 28, Sec. 1332, U.S.C.A.

Kaw Valley Drainage District vs. Metropolitan Water Co., 186 Fed. 315.

A. The authorities cited by respondents do not support their contention that petitioner was authorized to commence its administrative condemnation proceeding before the United States District Court.

II.

Rule 71 A, Federal Rules Civil Procedure, does not enlarge the jurisdiction of the United States District Court. It is a mere procedural rule governing cases properly within the jurisdiction of the District Courts.

Federal Rules of Civil Procedure, Rule 82.

III.

The decision of the court below is contrary to every previous decision of this court and of the Court of Appeals for the Eighth Circuit itself.

Madisonville Traction Co. vs. St. Bernard Mining

Co., 196 U. S. 239, 49 L. ed. 462.
Burford vs. Sun Oil Company, 319 U. S. 315, 87 L. ed. 1424.
Kaw Valley Drainage District vs. Metropolitan Water Company, 186 Fed. 315 (C.A. 8th).
Des Moines Water Company vs. City of Des Moines, 206 Fed. 657 (C.A. 8th).

IV.

Petitioner's procedure substantially complied with the requirements laid down by Rule 71 A.

ARGUMENT.

I.

Petitioner manifestly could not institute the purely administrative proceeding prescribed by Iowa condemnation statutes in the United States District Court. The jurisdiction of the district court is limited to "civil actions".

Respondents urge that petitioner had its choice "of commencing the action (condemnation proceeding) in the state or Federal courts"; and that, having elected to initiate the condemnation action before the County Sheriff, petitioner necessarily lost its right to resort to the Federal courts. They urge that petitioner's right to condemn was granted by Chapter 471, Iowa Code 1950, whereas, the *procedure under eminent domain* is prescribed by Chapter 472. They urge (and the district court so held) that the condemnation proceeding before the sheriff could have been instituted *in the first instance* before the United States District Court "under Rule 71A". In support of this contention the case of *Franzen vs. Chicago, Milwaukee & St. Paul Ry. Co.*, 278 Fed. 370 (C.A.7) and a number of other cases involving

condemnation of lands by the United States under Federal statutes are cited.

We may concede that if petitioner had a right to commence its condemnation action initially in the United States District Court, and chose instead to go before the Sheriff of Pottawattamie County, Iowa, it cannot now retrace its steps; but it is too plain for argument that the United States District Court cannot entertain a purely administrative proceeding prescribed by state statute. The Court of Appeals for the Seventh Circuit pointed out in the *Franzen* case, supra, that under the state law involved the condemnation proceeding was a judicial action from its inception; that the proceeding was, by state statute, initiated in a court of record, and was at all times under the control of judicial officers.

The Eighth Circuit Court of Appeals itself in *Kaw Valley Drainage District vs. Metropolitan Water Co.*, 186 Fed. 315 said:

> "While it is true that the state may not deprive the federal court of its jurisdiction to determine matters of a judicial nature which are within the federal judiciary act, it by no means follows that, in all instances, the proceedings to take private property for public use, which are prescribed by the sovereign power of the state, must be from the inception judicial." * * *
>
> "The several decisions of the Supreme Court, relating to this subject, are in perfect harmony, to the effect that the power of eminent domain may be exercised by the state in such mode as it sees fit. It may be by administrative inquest, if provision is made permitting a determination of the amount of damages by a civil action at some period before the proceedings become final, or the proceeding may be by civil action at the outset. If the former, the federal courts are without jurisdiction until the proceedings assume the character of a civil action, when, by the latter mode, federal courts

> may have jurisdiction from the inception of the proceeding, if the requisite diversity of citizenship and amount in controversy exist."

Here the Iowa statutes prescribe an administrative proceeding before the County Sheriff; and the proceeding becomes judicial in character (the subject of a "civil action") only when the case is brought before the courts for determination.

The cases cited on Page 7 of respondents' brief do not support their contentions. Except for the *Franzen* case, already distinguished, they involve condemnation proceedings authorized by Federal statutes under the original Conformity Act, now superseded by Rule 71A, Federal Rules of Civil Procedure. Thus, in *Central Neb. Public Power & Irr. Dist. vs. Harrison*, 127 F. 2d 588, a condemnation proceeding was instituted under the Federal Power Act, 16 USCA 791A, et seq., which granted to the Power District the right of eminent domain to be exercised in the United States Court and provided that the procedure should conform as nearly as may be to that in similar actions or proceedings under the law of the state where the property was situated. The Eighth Circuit Court of Appeals said:

> "As the lands involved are in Nebraska, the condemnation proceedings were had in a Federal court in that state; but the law and procedure of the state were controlling."

The principal question there involved was whether in the condemnation proceeding an option executed by the record owner of the land sought to be condemned was admissible in evidence. The case arose under the Conformity Act, no longer in effect, and is clearly not comparable with the case at bar.

In *United States vs. Dillman*, 146 Fed. 2d 572, the United States sought to condemn lands for an ordnance plant under

a Federal statute prescribing conformity with Texas law. The court reversed an award of damages made by the District Judge sitting without a jury because the findings of fact revealed that while making an inspection of the premises, the Judge was accompanied by a police sergeant who gave him information concerning various tracts. The case is without value here.

United States vs. Federal Land Bank of St. Paul, 127 Fed. 2d 505, involved the taking of lands located in the State of Minnesota by the United States in conformity with Minnesota statutes. The United States failed to serve separate notices of appeal upon different landowners, and the district court dismissed the government's appeal. The Court of Appeals for the Eighth Circuit affirmed. The case has no bearing on the jurisdictional issue before the court.

The case of *United States vs.* 16,572 *acres of land*, 49 F. Supp. 555, from the United States District Court for the Southern District of Texas is more closely in point than any of the others cited. That was a condemnation action instituted by the United States to acquire lands for a bombing field in wartime. Under the Conformity Act, then in force, the Texas procedural law was to be followed. The Texas statutes required that condemnation proceedings be instituted by the appointment of commissioners by a County Judge (not a judicial officer). If any party interested filed objections to the awards made by the commissioners, the case was docketed in the County Court; the adverse party was to be cited in by process, and the case tried before a judge and jury. District Judge Kennerly in the course of the opinion pointed out that under Texas law there was a clear distinction between a condemnation action and a "suit in the state court".

We have been unable to find the case of *United States vs. 18,236 acres of land in Franklin County, Pennsylvania*, 6 F. Supp. 665. The citation is erroneous.

In *United States vs. 1010.8 acres of land in Sussex County, Delaware*, 77 Supp. 529, the United States under Federal statutes instituted condemnation proceedings in conformity with Delaware statutes. The question presented was which of the particular Delaware condemnation statutes should be applied. No question of the character here involved was considered by the court.

Of similar import are the cases reported at 43 F. Supp. 937 and 43 F. Supp. 633 which involve condemnation under Federal statutes by the United States, the procedure being in conformity with the laws of the state.

It is urged by respondents that Iowa procedural statutes cannot effect the manner of commencing actions in the Federal court. This we readily concede. But respondents ignore the fact that, in determining whether a proceeding prescribed by state law constitutes a civil action, consideration must be given to the character of the proceeding, the officers of the state before whom it is conducted, and the inherent nature of the proceeding itself. Here state law granted to petitioner the right to take respondents' lands, but prescribed a purely administrative procedure to be followed; not a civil action.

The Federal courts here must follow and apply the laws of Iowa. The Federal statutes granted petitioner no right to condemn respondents' lands. Iowa law granted petitioner such right, but required that it be exercised first in a purely administrative proceeding. The United States District Courts have no power to convert an administrative proceeding prescribed by state law into a "civil action", cognizable in the Federal courts, merely because, had state law prescribed a judicial action, the case might properly have been instituted in the Federal tribunal.

II.

Rule 71A, Federal Rules of Civil Procedure, does not enlarge the jurisdiction of the United States District Court. It is a mere procedural rule governing procedural matters in cases properly within the jurisdiction of the District Court.

It is urged by respondents that petitioner "did not attempt to invoke the original jurisdiction of the Federal Court under Rule 71A", and that its complaint was therefore properly dismissed. Throughout respondents' brief the thought is reiterated that Rule 71A, in some undisclosed manner, enlarged petitioner's rights or broadened the jurisdiction of the district court. This is clearly fallacious. It must be remembered that Rule 71A is a mere procedural rule prescribed by this court. This court possesses no power to increase, diminish, or enlarge the jurisdiction of the district courts of the United States. Power to change the jurisdiction of the district courts is left solely to Congress. Furthermore, the Rules of Civil Procedure themselves specifically provide nothing therein contained shall affect either jurisdiction or venue. Rule 82, Rules of Civil Procedure.

III.

The decision of the court below is contrary to every previous decision of this court, and of the Court of Appeals for the Eighth Circuit itself.

Under Division II of their brief at pages 21 to 26, respondents urge that the decision of the Eighth Circuit Court of Appeals is in harmony with prior decisions of this court and those rendered in other circuits. They invoke the elementary rule that petitioner's complaint was required to show jurisdiction in the Federal court. They cite *Norton vs. Larney*, 266 U.S. 511, 69 L.Ed. 413, which was an action to

quiet title to a tract of land in Oklahoma originally allotted to a Creek Indian. This court in an opinion by Mr. Justice Sutherland there held that jurisdiction of a Federal court must affirmatively and distinctly appear from the allegations of the complaint, but that, where the pleadings disclosed that the title of one litigant depended upon the construction of an act of Congress, the jurisdiction of the court sufficiently appeared. *Young vs. Main*, 72 F. 2d 264, was an Eighth Circuit case in which the complaint alleged rescission of a contract obtained by fraud wherein plaintiff had paid $2,891 for certain machines. The complaint also prayed for recovery of damages for conspiracy or deceit in excess of $3,000. The court held that there could be no right to recover damages for deceit where the contract had been rescinded and that, since the complaint showed on its face that the $2,891 was the most plaintiff could recover, the requisite jurisdictional amount was not shown. *Ward vs. Morrow*, 15 F. 2d 660, is another Eighth Circuit decision holding merely that allegations as to residence of the parties were insufficient to show diversity of citizenship. The case of *Williams Livestock Company vs. Delaware L. & W. R. Co.*, 285 Fed. 795, from the United States District Court in Pennsylvania points out that under Pennsylvania law a railroad company seeking to condemn land was required to institute a judicial proceeding in the Pennsylvania Court of Common Pleas. The District Court there held that such action prescribed by state law was a "civil action", within the meaning of the Federal statutes, and was, therefore, properly brought in a Federal tribunal.

Respondents point out that in the *Williams* and *Franzen* cases state law required the appointment of appraisers, or viewers, as a preliminary step in condemnation proceedings, and that in each case it was held that the viewers or appraisers might be appointed by the Judge of the United States District Court. The contention seems to be that since

viewers or appraisers may be appointed by the United States District Judge in a judicial action, the United States District Judge, or United States Marshal, could properly have appointed commissioners to assess damages in conformity with Iowa law and as prescribed by Rule 71A. Counsel entirely overlook the fact that the statutes of Illinois and Pennsylvania involved in the *Preston* and *Williams* cases provided for a judicial proceeding in the state courts in condemnation cases. Iowa law provides for an administrative proceeding.

Under the Conformity Act, prior to the adoption of Rule 71A, the district courts proceeded in accordance with the procedure prescribed by state law. A United States District Court in Iowa vested with the jurisdiction to entertain domain cases under Federal control under the Conformity Act would doubtless have appointed all appraisers required by state law. The Conformity Act no longer governs procedural matters in the Federal courts in condemnation proceedings, for Rule 71A has occupied the field. To the extent that Rule 71A requires procedural matters to coincide with the requirements of state law, the district judge may make all necessary appointments in cases properly within the jurisdiction of the United States District Courts. But Rule 71A has not modified or enlarged the jurisdiction of the District Courts of the United States.

Counsel for respondents attempt to distinguish the case of *Stafford vs. Sun Oil Co., et al.* 319 U.S. 345, 87 L.Ed. 1426, from the case at bar, because plaintiff there sought to completely set aside the order of a state administrative tribunal, whereas, it is said that the case at bar "is an appeal from an award, and does not attempt to set aside the award". It is plain that in the *Sun Oil* case a state administrative proceeding was conducted before an administrative tribunal as required by state law. State law provided for an "appeal" to a state court. But plaintiff, a non-resident of the state, in-

stituted his action in the Federal court to set aside the administrative order although state law authorized only an "appeal" to a state court. In the case at bar petitioner in conformity with state law instituted its administrative proceeding. It was necessary that a "notice of appeal" be served on the sheriff and the opposing landowners to prevent the administrative award from becoming a finality; so petitioner served the notice of appeal, then instituted its action in the United States District Court. It is apparent that counsel's attempt to differentiate the cases has no substance.

The Texas statutes involved in the *Sun Oil* case provided for a judicial review of an administrative decision, just as do the Iowa statutes in the case at bar. Since petitioner is seeking the judicial review it is by Federal law a plaintiff, although named by state statute a defendant. Petitioner properly invoked Federal jurisdiction at the earliest possible time, and as a plaintiff is entitled to maintain its civil action in the United States District Court.

CONCLUSION.

By the laws of Iowa everyone concedes that the "appeal" from the award of condemnation commissioners is a civil action, and a judicial proceeding triable as an ordinary suit at law. The Federal statutes grant to the District Courts of the United States jurisdiction over "civil actions" in cases wherein more than three thousand dollars, exclusive of interest and costs, is involved, if the controversy be wholly between citizens of different states. The statutes of the United States make no exceptions of civil actions involving eminent domain proceedings under state law. To sustain the decision of the Court of Appeals requires engrafting upon Title 28, Sec. 1332 and 1441 the words "except in civil actions involving the exercise of the power of eminent domain by a non-resident of the state." We submit that the

plain language of the statute permits no such exception.

We think it plain that petitioner is, under Federal law, either a plaintiff or defendant in an Iowa eminent domain case after administrative procedures have been completed. If petitioner be a plaintiff, then it properly invoked the jurisdiction of the District Court. If petitioner be a defendant, then it properly invoked the jurisdiction of the District Court by removal.

Contrary to the contentions of respondent, the questions presented by this record are of great importance to pipe line companies, transmission and power line companies, railroads, and other foreign corporations operating within the State of Iowa. Because of the similarity of Iowa laws of eminent domain to the laws of many other states, the questions presented are of general importance and of more than usual interest. We believe that this case is one which merits the consideration of this court.

Respectfully submitted,

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